

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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In Re:

SMOKIN' DUTCHMAN HOLDINGS, LLC  
f/k/a Smokin' Dutchman LLC,

Case No. 24-02343

Debtor.

Hon. Scott W. Dales

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**DECLARATION OF KRAGE FOX IN SUPPORT OF DEBTOR'S  
MOTIONS FOR FIRST DAY RELIEF**

I, Krage Fox, Member of Smokin' Dutchman Holdings, LLC f/k/a Smokin' Dutchman LLC, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

**I. Introduction**

1. Smokin' Dutchman Holdings, LLC f/k/a Smokin' Dutchman LLC ("Debtor") was founded in . The Debtor has operated restaurants pursuant to Franchise Agreements with Dickey's Barbecue Restaurants, Inc. ("Dickey's").

2. The Debtor operates restaurants in four (4) locations located in Kalamazoo, Michigan, Jenison, Michigan, Holland, Michigan, and Rockford, Michigan. The Debtor opened its Kalamazoo, Michigan location in 2018. It acquired the Rockford and Jenison locations in 2020. It opened the Holland location in 2022.

3. The Debtor's annual revenues from 2022 through 2023 have ranged from \$3,681,000 to \$3,336,000. In 2024 to date, the Debtor has generated revenues of approximately \$2,000,000.

4. I have managed the day to day operations of the Debtor since its inception and continue to manage the day to day operations.

5. The Debtor enters this Chapter 11 Case with approximately \$2.1 million in debt. This consists of the following debts for which the creditor claims security:

CREDITOR	AMOUNT
Huntington National Bank	\$ 194,000
Kalsee Credit Union	\$ 448,000
Dahl BQ	\$ 273,000
US Small Business Administration	\$ 560,000
IDEA 247	\$ 130,000
Michigan Department of Treasury	\$ 158,000
Total	\$1,763,000

6. Some of the Cash Collateral Secured Creditors also assert a security interest in other assets of the Debtor including general intangibles, goods, machinery and equipment. The Debtor estimates the value of those other assets is approximately \$86,500, exclusive of amounts owed to the Debtor by Dickey's and claims the Debtor has against Dickey's.

7. The Debtor estimates its unsecured nonpriority debt at approximately \$271,000, exclusive of any deficiency amounts owed to secured creditors in excess of value of their collateral.

8. The Debtor needs to utilize its cash, accounts receivable, and inventory to fund its ongoing operations to preserve the going concern value of the Debtor.

9. The Chapter 11 Case was filed to preserve and maximize the value of the Debtor's assets for the benefits of all stakeholders. The Debtor needs to reduce the debt relative to

the value of its assets. In addition, the Debtor intends to seek this Court's authority to reject the Dickey's Franchise Agreements to alleviate the Debtor from the burden imposed upon it by Dickey's.

10. The Debtor needs to utilize its cash, accounts receivable, and inventory to fund its ongoing operations to preserve the going concern value of the Debtor.

## **II. Background of Declarant**

11. I am the Fifty Percent (50% ) Member of the Debtor. I have also managed the day to day operations of the Debtor since its inception. President and Chief Executive Officer of the Debtor. I submit this Declaration to offer the Court and parties in interest a background of the Debtor and the circumstances leading to the commencement of the Chapter 11 Case and provide evidentiary basis for the relief requested in the applications and motions filed at the commencement of this Case ("First Day Motions").

12. I am generally familiar with the Debtor's day-to-day operations, businesses, financial affairs, and books and records. Unless otherwise stated, all facts in this Declaration are based upon my personal knowledge, my discussions with members of the Company's management team, outside advisers to the Company, and my review of documents and information concerning the Debtor's operations, financial affairs, and restructuring efforts, and/or my personal opinion based upon my experience and general knowledge about the Debtor and the industry in which it operates.

13. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtor. If called to testify, I would testify to the matters set forth herein.

### **III. Discussion**

#### **A. History and Business Overview**

14. The Debtor's sole business has been to operate restaurants as set forth above.

15. The Debtor's financial difficulties have been caused by the actions of Dickey's which have imposed extreme and unreasonable demands upon the financial resources of the Debtor and the time of the Debtor's employees.

16. The Debtor has approximately 26 employees. The employees are compensated in various ways. This includes hourly, salary, and manager bonus based compensation.

#### **IV. First Day Motions**

17. I have reviewed the cash flow projections submitted in support of the First Day Motions and believe the projections are fair and reasonable projections of the Debtor's revenues and operating expenses during the period reflected in the projections.

18. I believe the Debtor can operate in accordance with the budget set forth in the cash collateral projections

19. The Debtor's continued use of its cash collateral is necessary to maintain its business operations and pay its employees, vendors for post-petition supplies, utilities, Chapter 11 administrative expenses and other post-petition expenditures during the course of the Chapter 11 Case.

20. If the Debtor is not able to use cash collateral, it will suffer immediate and irreparable harm in that it will not be able to continue to operate and will lose the going concern value as well as value of the Debtor's accounts receivable, inventory and other assets.

21. The Debtor receives various utility services essential to its ongoing operations. The adequate assurance of payment proposed in the Debtor's First Day Motions will provide each utility with adequate assurance of payment for post-petition services rendered to the Debtor. The Debtor has historically, timely, and faithfully paid its utility expenses prior to the bankruptcy filing.

22. The Debtor has filed in this Case the following First Day Motions:

- A. Debtor's Motion for Entry of Final Orders Authorizing the Use of Cash Collateral, Providing Adequate Protection to Secured Creditors and for Preliminary and Final Relief on Motion and Related Relief.
- B. Motion for Interim and Final Orders Approving the Debtor's Proposed Form of Adequate Assurance of Payment to Utility Providers Establishing Procedures for Resolving Objections by Utility Providers and Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services.
- C. Debtor's Motion for Order Authorizing Payment of Pre-Petition Employee Wages and Compensation, Employee Benefits and Related Obligations and Authorizing Banks to Honor Pre-Petition Checks for Payment of Pre-Petition Employee Obligations.

23. The Debtor has filed the First Day Motions to continue its current operations in Chapter 11 with as little disruption as possible, maintain the confidence and support of its vendors, customers, employees, and other stakeholders. I have reviewed each of the First Day Motions and believe the facts stated there to be true and correct to the best of my knowledge with

appropriate reliance upon the Debtor's officers, management, employees, and advisers. I incorporate by reference the factual statements in each of the First Day Motions as set forth herein.

24. I believe that the relief sought in the First Day Motions is necessary to successful implementation of the Debtor's efforts to maximize the value of its estate. It is my further belief that, with respect to the First Day Motions, authority to pay specific pre-petition claims or continuing selected pre-petition programs, the relief requested is essential to the maintenance of the Debtor's operations and necessary to avoid immediate and irreparable harm to the Debtor and Debtor's estate and its creditors.

25. The success of his Chapter 11 Case depends upon the Debtor's ability to preserve its operations while it restructures its financial obligations. The relief requested in the First Day Motions is a critical component of maintaining the confidence of the stakeholders in this Case to implement the strategy.

26. I respectfully request that all the relief requested in the First Day Motions, and such other and further relief as may be just and proper, be granted.

I declare under penalty of perjury that the foregoing *Declaration of Krage Fox in Support of Debtor's Motions and Request for First Day Relief* is true and correct.

Dated: September 9, 2024

/s/ Krage Fox  
Krage Fox, Member  
Smokin' Dutchman Holdings, LLC

# EXHIBIT A



	9/9/2024	9/16/2024	9/23/2024	9/30/2024	10/7/2024	10/14/2024	10/21/2024	10/28/2024	November	December	January	February	Totals
Sales Revenues	\$60,863	\$61,429	\$59,551	\$57,881	\$62,658	\$56,659	\$64,745	\$57,115	\$256,000	\$240,000	\$209,000	\$248,000	\$1,433,911
Inventory Purchases	\$ 22,243	\$ 22,768	\$ 20,863	\$ 20,373	\$ 23,643	\$ 20,252	\$24,742	\$20,340					\$175,224
Manager Salary	\$ 10,306		\$ 10,306		\$ 10,306		\$ 10,306		\$ 20,612	\$ 20,612	\$ 20,612	\$ 20,612	\$123,672
Hourly Payroll	\$ 15,425		\$ 15,425		\$ 15,425		\$ 15,425		\$ 30,850	\$ 30,850	\$ 30,850	\$ 30,850	\$185,100
Admin Payroll	\$ 3,041		\$ 3,041		\$ 3,041		\$ 3,041		\$ 6,082	\$ 6,082	\$ 6,082	\$ 6,082	\$36,482
Payroll service fees	\$ 185		\$ 185		\$ 185		\$ 185		\$ 370	\$ 370	\$ 370	\$ 370	\$2,220
Payroll taxes	\$ 2,813		\$ 2,813		\$ 2,813		\$ 2,813		\$ 5,626	\$ 5,626	\$ 5,626	\$ 5,626	\$33,756
Royalties and Ad Fund	\$ 5,478	\$ 5,529	\$ 5,360	\$ 5,209	\$ 5,639	\$ 5,100	\$ 5,827	\$ 5,140					\$43,282
Rent Arrears Cure													\$32,150
Rent	\$ 595			\$ 21,144				\$ 21,144		\$ 21,144	\$ 21,567	\$ 21,567	\$105,566
Digital Fees									\$595	\$595	\$595	\$595	\$3,570
Third Party Vendor fees	\$ 3,563	3196	3563	3196	3196	\$3,563	\$3,196	\$3,563	\$13,518	\$14,554	\$10,995	\$19,004	\$95,107
Bank and Credit Card Fees	\$ 160	160	160	160	160	\$160	\$160	\$160	\$640	\$640	\$650	\$650	\$3,860
Local Advertising	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$ 1,200	\$4,800	\$4,800	\$5,000	\$5,000	\$29,200
License Fees									\$600				\$900
Business Insurance (W/C, auto, liability, property, etc)		1840				\$1,840			\$1,840	\$1,850	\$1,850	\$1,850	\$11,070
Health Ins.	\$ 989				989				\$1,000	\$1,000	\$1,000	\$1,000	\$5,978
Electric	\$ 2,590	5443			2,590	5443			\$8,028	\$8,028	\$8,028	\$8,028	\$48,158
Water				105			\$105		\$105	\$105	\$105	\$105	\$630
Gas				1120			\$1,120		\$1,120	\$1,120	\$1,120	\$1,120	\$6,720
Specialized Disposal Services				308				\$308	\$310	\$310	\$310	\$310	\$1,856
CO2		488				\$488			\$488	\$488	\$488	\$488	\$2,988
Phone/Internet/Cable	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218	\$ 218	\$872	\$872	\$872	\$872	\$5,255
Supplies and Equipment		550		550		\$550			\$1,100	\$1,100	\$1,100	\$1,100	\$6,600
Pest Control				152					\$152	\$152	\$152	\$152	\$912
Repairs and Maintenance	\$ 256	\$ 256	\$ 256	\$ 256	\$ 256	\$ 256	\$ 256	\$ 256	\$1,024	\$1,024	\$1,024	\$1,024	\$6,147
Cleaning	\$ 118	\$ 118	\$ 118	\$ 118	\$ 118	\$ 118	\$ 118	\$ 118	\$472	\$472	\$475	\$475	\$2,841
Dues and Subscriptions	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$100	\$100	\$100	\$100	\$600
Office Supplies	\$ 195	\$ 195	\$ 195	\$ 195	\$ 195	\$ 195	\$ 195	\$ 195	\$780	\$780	\$780	\$780	\$4,680
Software	\$ 288	\$ 288	\$ 288	\$ 288	\$ 288	\$ 288	\$ 288	\$ 288	\$1,152	\$1,152	\$1,152	\$1,152	\$6,912
Meals, Meetings, Travel	\$ 40	\$ 40	\$ 40	\$ 40	\$ 40	\$ 40	\$ 40	\$ 40	\$160	\$160	\$160	\$160	\$960
Uniforms	\$ 37	\$ 37	\$ 37	\$ 37	\$ 37	\$ 37	\$ 37	\$ 37	\$148	\$148	\$148	\$148	\$888
Vehicle Expense	\$ 275	\$ 275	\$ 275	\$ 275	\$ 275	\$ 275	\$ 275	\$ 275	\$1,100	\$1,100	\$1,100	\$1,100	\$6,600
													\$0
													\$0
													\$0
Professional Service Fees													\$0
Bankruptcy Attorney (Perry Pastula)	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0
Special Counsel			2000					\$2,000	\$3,000	\$3,000	\$3,000	\$3,000	\$16,000
Bankruptcy Trustee				2500				\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$15,000
Bookkeeping	300	300	300	300	300	300	300	\$300	\$1,200	\$1,200	\$1,200	\$1,200	\$7,800
Tax Accountants			2000				\$2,000		\$3,000	\$3,000	\$3,000	\$3,000	\$16,000
													\$0
	\$70,330	\$42,926	\$69,893	\$56,544	\$71,524	\$40,348	\$73,872	\$56,809	\$112,744	\$135,238	\$164,792	\$140,324	\$1,035,314
Net Cash Flow	-\$9,467	\$18,503	-\$10,242	\$1,337	-\$8,856	\$16,321	-\$9,127	\$306	\$143,256	\$104,752	\$44,238	\$107,576	\$398,597
Starting Cash	\$16,000	\$6,533	\$25,037	\$14,595	\$16,032	\$7,166	\$23,486	\$14,569	\$14,665	\$157,921	\$262,693	\$306,921	\$414,597
Ending Cash	\$6,533	\$25,037	\$14,595	\$16,032	\$7,166	\$23,486	\$14,569	\$14,665	\$157,921	\$262,693	\$306,921	\$414,597	